IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPL. NO. 5545 OF 2004.
IN
CRIMINAL APPEAL NO. 1308 OF 2004.

Nirmal @ Rakesh Dnyaneshwar Thakur..Applicant.

VERSUS.

The State of Maharashtra. ..Respondent.

...

Mr. Niranjan Mundargi for the applicant.

Smt. V.R.Bhosale, APP for the State.

CORAM: S. B. MHASE &
ANOOP V. MOHTA, JJ.

DATE : DECEMBER 21, 2004.

P.C.:-

1. Heard Mr. Niranjan Mundargi for the applicant and Smt.V.R.Bhosale for the respondent State. This is application to suspend the sentence passed by the Third Additional Sessions Judge, Thane on 15.9.2004 in Sessions Case No. 169 of 2003.

2. According to the prosecution, the present applicant - accused and another accused have committed an offence punishable under section 460 and 380 read with Section 34 of the Indian Penal Code by committing murder of the shop owner and thereby committed theft of golden articles from the said shop. The only evidence against

the present applicant is that he was absconding for a period of one year and thereafter certain golden articles were recovered from him. Except this, there is no evidence against him.

3. Learned counsel Shri. Niranjan Mundargi relied upon **AIR-1993 Supreme Court 1199 (Union Territory of Goa V/s. Boaventura D'souza & Anr.)** to demonstrate that with such type of evidence there can be a charge for stolen property, however, the accused in that event cannot be connected with the act of the murder with the aid of presumption under section 114 of the Indian Evidence Act. Smt. V.R.Bhosale, the learned APP for the State vehemently opposed the said submission. However, looking to the facts and circumstances of the case, we are inclined to suspend the sentence of the present applicant -accused and grant him bail. Therefore, we pass following order;

O R D E R

(1) The order of sentence passed by the IIIrd Addl. Sessions Judge, Thane in Sessions Case No. 169 of 2003, as against applicant - Nirmal @ Rakesh Dnyaneshwar Thakur vide its judgment and order dated 15.9.2004, is hereby

suspended till the final hearing of the appeal.

(2) Applicant be released on bail of Rs.50,000/-. Applicant may give two sureties for the said amount.

(3) Applicant shall give his address to the court within a period of one week from the date of his release on bail from the jail and will not change the same address unless informed to the court.

(4) Applicant shall equally submit his address to the police station and will attend the police station once in a week, preferably on Sunday in between 10.00 a.m. to 11.00 a.m.

(5) Application is accordingly disposed of.

(ANOOP V.MOHTA, J.) **(S.B.MHASE,J.)**